

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“the Agreement”), is made and entered into this ____ day of June, 2008, by and between the Commonwealth of Virginia (“the Commonwealth”) and _____, individually and in his/her capacity as personal and legal representative of the Estate of _____, deceased (“Claimant”).

WHEREAS _____ (“_____”) was a [student/member of the faculty] at Virginia Polytechnic Institute and State University (“Virginia Tech”) on April 16, 2007, during the mass shootings perpetrated by a now deceased Virginia Tech student (“the Tragedy”) on the Virginia Tech campus; and

WHEREAS _____ was fatally injured during the Tragedy; and

WHEREAS this Agreement is one of a group of settlements of potential claims arising from the Tragedy upon terms similar to those available to other victims and victims’ families (“this Settlement”); and

WHEREAS the parties disagree on whether or not the Commonwealth has any liability arising out of or related to the Tragedy, nevertheless, the Commonwealth and the Claimant desire to settle all actual and potential claims arising out of or relating to the Tragedy.

NOW THEREFORE, the Parties have agreed to the following terms and conditions.

I. SPECIAL DAMAGES FUND

The Commonwealth, including Virginia Tech, shall establish a fund to be available for the reimbursement or, where necessary and practical, advance of reasonable

mental health care expenses, and expenses for medical care related to presently manifesting physical conditions that a licensed, treating medical doctor (M.D.) will confirm, in writing, are, to a reasonable degree of medical certainty, caused solely by the Tragedy, for _____'s immediate family, _____, _____, and _____ ("_____ Family") to the extent that the need for such care is precipitated by, and reasonably related to the Tragedy, and to the extent that such care is not covered by insurance. Requests for reimbursement or for an advance shall be submitted to the Virginia Criminal Injuries Compensation Fund (CICF), P.O. Box 26927, Richmond, Virginia 23261. Determinations regarding payment of such requests shall be made by the Director of the Fund and shall not be unreasonably or arbitrarily delayed or denied. Any such determination shall be final. A written statement of a licensed health care provider of treatment shall constitute *prima facie* support for coverage hereunder.

II. NON-MONETARY COMMITMENTS

A. Together with other victims and other victims' families, _____'s Family will have the opportunity to meet with the Governor of Virginia on three different occasions: once in 2008, once in early 2009, and again in late 2009 or early 2010, before his term as Governor concludes. The meetings will provide opportunities to review and discuss legislative and administrative accomplishments and strategies in response to the Tragedy, the suggestions of the Report of the Virginia Tech Review Panel, and such other matters related to the tragedy as _____'s Family wishes to bring to the attention of the Governor. The Governor's Office and the Office of the Attorney General will

provide _____'s Family a copy of a written briefing identifying specific legislative and administrative responses to the Tragedy no later than June 30, 2008.

B. Within six (6) months of court approval of this Agreement, _____'s Family, together with other victims and victims' families, will be provided opportunities to meet with senior Virginia Tech officials, including but not limited to the President, the Policy Group, and the Chief of Police of the Virginia Tech Police Department. In these meetings, _____'s Family will be provided with an overview of changes made on campus since April 16, 2007, in response to the Tragedy. At such meetings, _____'s Family will be provided with a reasonably full opportunity to ask questions regarding the Tragedy. _____'s Family will have a continuing opportunity in the future to provide comment, in advance, with respect to events or activities planned by Virginia Tech to honor or remember the Tragedy or its victims. It will be the responsibility of _____'s Family to make sure that the Virginia Tech Office for Recovery and Support (540/231-0062) has current contact information for this purpose.

C. Within six (6) months of court approval of this Agreement, Chief Flinchum of the Virginia Tech Police Department and appropriate Virginia State Police officials will provide a briefing to _____'s Family and other victims and victims' families regarding the investigation of the Tragedy. This briefing will include a reasonably full opportunity to ask these officials questions regarding the Tragedy.

D. Virginia Tech shall create and maintain one or more electronic archive(s) of its written records, in whatever form, related to the Tragedy, and will accomplish that objective within six (6) months of court approval of this agreement. Together with other victims and victims' families, _____'s Family will have the opportunity to make

appropriate contributions to what is contained in such archive(s). To the extent practicable, and on equal terms with other victims and victims' families who have access pursuant to a settlement agreement with the Commonwealth, _____'s Family will be provided with remote computer access to such archive(s). No medical records shall be included in such archive(s).

E. The Hokie Spirit Memorial Fund ("HSMF") will remain open to new contributions for a minimum of five (5) years. All contributions to the HSMF received after court approval of this Settlement shall be distributed to the Hokie Spirit Scholarship Fund established by Virginia Tech as a memorial to the victims of the Tragedy.

F. Representatives of the Commonwealth and Virginia Tech will continue to be willing and available to meet with _____'s Family individually for ninety (90) calendar days following court approval of this Agreement for the purposes of discussing and considering other non-monetary concerns and interests, not included here, that are specific to _____'s Family and their needs. Arrangements for such a meeting should be made by contacting, for the Commonwealth, Kate Paris, Executive Assistant to the Chief of Staff and Counselor to the Governor (804/225-4810), and, for Virginia Tech, Patti Smith, Paralegal to the University Legal Counsel (540/231-5128).

III. DIRECT PAYMENT TO CLAIMANT

\$3,850,000.00 shall be available for direct payments to victims and personal representatives of victims' estates. The Commonwealth, including Virginia Tech, will pay one single, direct payment of \$100,000.00 of this amount to the Claimant in his/her capacity as the personal representative of _____'s estate within thirty (30) calendar days of court approval of this Agreement.

IV. PUBLIC PURPOSE FUND

The Commonwealth shall establish, and appoint a trustee to invest and administer (at the Commonwealth's expense), a Public Purpose Fund ("the Fund") in the amount of \$3,650,000.00. The Fund will be divided into two sub-funds ("the Charitable Purposes Fund" and "the Hardship Fund") and the trustee will be responsible for the maintenance and orderly distribution of both sub-funds.

A. Charitable Purposes Fund – \$1,750,000.00 shall be paid into a charitable purposes sub-fund. A twelve (12) member Board composed of victims of the Tragedy and/or immediate family members of victims participating in these settlements, and four (4) officials of the Commonwealth (not including Virginia Tech), will be appointed by the Governor for an initial term of two (2) years. The Governor will make appointments from a single list of nominations developed by a majority vote of the participants in these settlements. The appointed Board shall be responsible for choosing the purposes for which these funds will be administered and expended. Following initial appointment by the Governor, the Board shall establish rules governing its continued operations including, without limitation, the election, terms, and replacement of non-Commonwealth Board Members, and the manner in which the Board will conduct its meetings and business. A majority of the Board shall be victims of the Tragedy and/or immediate family members of victims participating in this Settlement. Purposes of this sub-fund may include, but are not limited to, campus safety and security grants, remembrance activities and tributes, grants and assistance to crime victims, safety and related educational organizations, distributions to not-for-profit organizations, or other purposes identified by the Board in its sound exercise of discretion.

B. Hardship Fund – \$1,900,000.00 will be paid into a hardship sub-fund. In addition, any money made available for direct payments pursuant to paragraph III of this Agreement, but left unclaimed as a result of non-participation by eligible injured victims or personal representatives, will become part of the Hardship Fund. These funds will be available for distribution to victims and to the personal representatives of the estates of victims of the Tragedy, based on the unique individual circumstances of severe hardship, injury, or loss sustained by a victim or by the family members of a deceased victim, pursuant to a neutral evaluative process, upon application, and the following terms and conditions:

1. The trustee shall distribute these funds according to the determination and direction of the Honorable Robert Harris, as a neutral evaluator, who has agreed to hear all of the claims submitted for distribution from the fund, upon written submissions and/or oral presentations of no more than one hour. Requests for additional time to present such claims may be submitted to Judge Harris together with the claim. Such hearing shall take place in the Richmond, Virginia area.

2. Any and all notices of intent to apply for distribution from the Hardship Fund must be submitted to Tabitha West, The McCammon Group, 1111 East Main Street, Suite 1700, Richmond, Virginia 23219 (804/421-5527) within ten (10) calendar days of court approval of the settlements requiring such approval. This deadline is the same for potential claimants whose settlements do not require court approval, who shall be notified of said approval on the same day an order approving the settlements is received by counsel for the Commonwealth.

3. Written submissions supporting the request for distribution from the Hardship Fund must be submitted to Judge Harris at The McCammon Group, 1111 East Main Street, Suite 1700, Richmond, Virginia 23219 (804/343-0922) within fifteen (15) calendar days after notice of intent to participate is provided, and at least seven (7) calendar days before a scheduled hearing, if a hearing is requested, whichever is earlier. A participant may, in such written submission, indicate his or her intent to rest solely on the written submission and not to have a hearing.

4. By no later than sixty (60) calendar days after the deadline for submitting notice of intent to participate in the Hardship Fund, all submissions will be reviewed and, if requested, hearings completed.

5. After a determination of damages for each participant in the Hardship Fund is made, the *pro rata* share of the total that each such damages amount bears shall be calculated, and that percentage used to calculate the amount to be distributed from the Hardship Fund. However, no single distribution shall be in an amount that is more than 7.5% of the total value of the Hardship Fund, and all distributions will be the lesser of the actual damages determined by Judge Harris or the *pro rata* percentage of the Hardship Fund represented by that damages amount.

6. Distribution from the Hardship Fund is available only for actual damages that could be proved to and awarded by a Virginia circuit court in a typical negligence-based tort action.

7. Hardship funds are not available for expenses that are addressed through the Special Damages Fund described in paragraph I above or for expenses that have been paid or forgiven by a collateral source.

8. The trustee shall make distributions from the Hardship Fund, pursuant to the direction of Judge Harris, within thirty (30) calendar days of the completion of all reviews and hearings. Decisions by Judge Harris as to such distributions shall be final and not subject to appeal.

V. RELEASE AND DISCHARGE

A. Based upon the considerations described above, the reasonableness and adequacy of which is acknowledged by Claimant, Claimant hereby completely releases and discharges the Commonwealth of Virginia, Virginia Polytechnic Institute and State University, Roanoke County, Pulaski County, Giles County, Floyd County, Montgomery County, the Town of Blacksburg, and the New River Valley Community Services Board, and all of the agencies, officials and employees, of those public bodies, from any and all claims, actions or causes of action, demands, damages, costs and compensation whatsoever which Claimant incurred or which he/she may incur on account of or in any way in connection with the Tragedy.

B. Counsel for the Commonwealth and Claimant shall use their best efforts to obtain by not later than June 17, 2008, judicial approval of the settlement memorialized in this Agreement from the Circuit Court for the City of Richmond by filing a Petition in substantially the form attached hereto as Exhibit A.

C. Upon court approval of the terms of this Agreement as required by Va. Code § 8.01-55, this Agreement shall be a full, binding and complete settlement and release between Claimant, both in his/her individual capacity and as personal and legal representative of the Estate of _____, and the

Commonwealth of Virginia, their agents, employees, successors, heirs and assigns and those other parties identified in paragraph A above.

D. The Commonwealth waives any lien, and any right to subrogation pursuant to Va. Code § 19.2-368.15, arising from any payments made to the Claimant or to other individuals, based on the death of _____, from the Criminal Injuries Compensation Fund as set forth in Va. Code §§ 19.2-368.1-368.18.

VI. GENERAL PROVISIONS

A. The Commonwealth and Virginia Tech expressly deny any and all liability arising from or related to the Tragedy and further state that this Agreement, payments pursuant to this Agreement, and statements made in connection with the negotiations for this Agreement do not constitute and shall not be construed as admissions of liability. Claimant maintains a strong belief in the validity of the claims asserted. This Agreement constitutes a compromise of a disputed claim entered into to avoid the costs and uncertainty of litigation.

B. Upon court approval of the settlement memorialized by this Agreement, the confidentiality of all documents produced by and to the parties directly or through legal counsel, except medical records, shall be waived. No party is precluded from speaking openly regarding the cause, circumstances, or other matters relating to the Tragedy, except that counsel shall continue to maintain as confidential mediation and settlement discussions that led to this Settlement.

C. This Agreement and any interpretation of it shall be governed by the laws of the Commonwealth of Virginia without regard to the Commonwealth's choice of law rules.

D. If any part, term or provision of the Agreement is held by a court to be illegal or in conflict with any law, or by statute becomes illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular invalid part, term or provision.

E. This Agreement constitutes and contains the entire agreement and understanding between the Claimant and the Commonwealth of Virginia regarding all actual and potential claims arising out of or relating to the Tragedy and shall be binding upon the executors, administrators, personal representatives, heirs, successors and assigns of each. Any other agreements, understandings or representations made by the parties are nullified and replaced by this Agreement. This Agreement may only be modified by written agreement signed by all parties.

IN WITNESS WHEREOF, the parties below have caused the Agreement to be executed as follows:

WITNESS the following signatures:

_____, Individually and as Personal Representative
and Administrator of the Estate of _____

COMMONWEALTH OF VIRGINIA:
CITY/COUNTY of _____, to wit:

Subscribed and sworn to before me, the undersigned Notary Public for the aforesaid jurisdiction, this ____ day of _____, 2008.

My Commission expires: _____.

Notary Public

COMMONWEALTH OF VIRGINIA

Wayne M. Turnage
Chief of Staff to Governor Timothy M. Kaine

VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY

Dr. Charles W. Steger
President